

01295

DECISION



D. Ruppert
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-186683

DATE: November 15, 1976

MATTER OF: HKP Services, Inc.

DIGEST:

1. Where small business concern is found to be nonresponsible by procuring activity, GAO will not review COC determination by SBA absent showing that either SBA (which denied COC) or agency failed to consider information vital to responsibility determination.
2. Protest alleging restrictive specifications raised subsequent to bid opening is untimely under 4 C.F.R. § 20.2(b)(1) and will not be considered under exception since question is not significant to procurement practices and, therefore, not for consideration pursuant to 4 C.F.R. § 20.2(c).

Invitation for bids (IFB) No. DAKF48-76-B-0042, a total small business set-aside, was issued by the Department of the Army, Procurement Division, Fort Hood, Texas, on March 31, 1976, for managing and operating the Army Spectrometric Oil Analysis Laboratory at Fort Hood.

By mailgram dated June 9, 1976, and subsequent correspondence, HKP and its counsel protested the rejection of its low bid. Initially HKP's protest was based upon the fact that the contracting officer rejected HKP's bid as nonresponsive because he believed the personnel resumes submitted by HKP did not reflect the experience requirements set forth in the IFB. Therefore, counsel contended that the contracting officer erroneously converted the question of HKP's responsibility to one of bid responsiveness.

Subsequent to the protest, the contracting officer determined that HKP was nonresponsible rather than nonresponsive and referred the matter to the Small Business Administration which denied HKP a certificate of competency.

Thereafter, counsel for HKP protested denial of the COC on the basis that because the experience requirements were unduly restrictive and SBA was bound to apply them, denial of the COC was in effect a second nonresponsiveness determination and HKP has been denied a determination on its responsibility. Counsel further states

that if our Office views the protest as one based on restrictive specifications and, therefore, untimely, the protest raises a question that is significant to procurement practice and may be considered pursuant to 4 C.F.R. § 20.2(c) (1976). Counsel states that the question raised is whether a procuring agency can deprive a bidder of responsibility and capacity determinations by both the contracting officer and the SBA by placing unjustified and restrictive experience requirements in its IFB.

The Army reports that although the contracting officer initially made his decision to disqualify HKP on the basis of nonresponsiveness, he subsequently made the disqualification on the basis of nonresponsibility and forwarded the case to SBA for consideration pursuant to Armed Services Procurement Regulation (ASPR § 1-705.4 (1975 ed.)). In this regard, the record contains a letter dated June 23, 1976, wherein the contracting officer requested the SBA office in Dallas, Texas, to review certain enclosed documents for appropriate action regarding issuance of a certificate of competency (COC) for HKP. The letter indicates that the following documents were forwarded to SBA:

- "a. Solicitation No. DAKF48-76-B-0042 (in duplicate)
- "b. Abstract of Bids
- "c. Pre-award Findings, consisting of Standard Form 129, Balance Sheet, and Record of Telephone Conversation dated 20 May 1976
- "d. Pertinent technical information (Personnel Resumes submitted by bidder)
- "e. Determination of Non-Responsibility
- "f. Determination of Responsiveness"

The determination of nonresponsibility made by the contracting officer discloses that based on HKP's balance sheet, the firm would be unable to meet the payroll for the first month of contract operation. The contracting officer also states that the contractor has no previous record of performance and the resumes submitted by the bidder do not

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meq: the qualification requirements as stated in section "F," pages 36 thru 40, paragraph 14 of the IFB. The contracting officer's determination of nonresponsibility states in part:

"In view of the fact that bidder has failed to affirmatively demonstrate his responsibility in that the information he has provided does not clearly indicate that he is responsible, and in consideration of the adverse impact on contract performance that an award on the basis of data submitted would have, it has been determined that an affirmative determination of responsibility cannot be made; the bidder does not meet the tests of responsibility; and is non-responsible for this procurement."

Under 15 U.S.C. § 637(b)(7) (1970), the SBA has the authority to issue or deny a COC. By letter dated July 20, 1976, the SBA office in Dallas advised HKP that it had declined to issue a COC to its firm in this instance stating that HKP's people did not meet the minimum qualifications set out in the IFB and that SBA's personnel would discuss the reason for denial if HKP wished such a conference. However, the letter indicated that such a conference would be for the sole purpose of assisting HKP in improving its position in future procurements and would not constitute a basis for reopening the case.

From the foregoing, it is clear that the contracting officer in fact determined HKP nonresponsible and properly referred the question of HKP's responsibility to SBA and there is no evidence presented to show that either the SBA or the agency failed to consider all relevant information. Our Office has held that when a bidder is denied a COC, and all relevant information has been considered, the contracting officer's determination of nonresponsibility must be regarded as having been affirmed by the SBA and the determination must be accepted by our Office. See Building Maintenance Specialists, Inc., B-186441, September 10, 1976; Environmental Tectonics Corporation, B-185259, February 13, 1976, 76-1 CPD 101.


However, counsel for HKP contends that since the experience requirements of the IFB set forth in section "F" are unduly restrictive, we should direct the contracting officer to delete the requirements from the IFB and then resubmit the question of HKP's responsibility to SBA.

The contention pertaining to restrictive specifications is untimely since the contention involves alleged improprieties in

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the LFB and should have been questioned prior to bid opening. See section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20 (1976), which requires that protests based on any alleged improprieties in a solicitation must be filed prior to bid opening. Furthermore, HKP's complaint of restrictive specifications filed after bid opening is not for consideration under the exception set forth in 4 C.F.R. § 20.2(c) (1976), since the question raised does not concern a principle of widespread interest as the issue has been considered on its merits previously. 52 Comp. Gen. 20 (1972); A.C.E.S., Inc., B-132720, February 13, 1975, 75-1 CPD 97.

For the reasons stated, the protest is denied.


Acting Comptroller General
of the United States